

**ANNUAL REPORT  
OF THE  
HEALTH POLICY ADVISORY COMMITTEE**



**Indiana Legislative Services Agency  
200 W. Washington Street, Suite 301  
Indianapolis, Indiana 46204**

**October, 2006**

# INDIANA LEGISLATIVE COUNCIL

## 2006

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# HEALTH POLICY ADVISORY COMMITTEE

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Sheri Caveda  
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Pat Hansen  
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## Staff

Casey Kline  
Attorney for the Committee

Kathy Norris  
Fiscal Analyst for the Committee

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.

## **I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES**

The Legislative Council assigned the following responsibilities to the Committee: (1) Restraint of trade issues associated with contact lenses (HR 73); and (2) Advisability of consolidating certain study committees (Health Finance Advisory Committee, Health Policy Advisory Committee, Health Care Account Advisory Board, Medicaid Advisory Committee, and Medicaid Work Incentives Council into the Health Finance Commission.

## **II. INTRODUCTION AND REASONS FOR STUDY**

House Resolution 73-2006 requested the Legislative Council to establish a committee to study restraint of trade with respect to contact lenses. The resolution further requested that the study include examining the availability of contact lenses in a commercially reasonable and nondiscriminatory manner within all channels of distribution, including alternate channels of distribution within Indiana, and the effect that any discriminatory distribution practices have on Indiana citizens who wear contact lenses.

The Legislative Council assigned the topic of consolidation of specified study committees into the Health Finance Commission.

## **III. SUMMARY OF COMMITTEE WORK**

The Committee met four times during the 2006 interim. All Committee meetings were held at the State House in Indianapolis.

The first meeting was held August 10, 2006, in a joint meeting with the Health Finance Commission. The procedure for electing a chairperson for the Health Policy Advisory Committee was discussed and Mr. Alex Slabosky was appointed as convener for the next meeting of the Committee.

The second meeting was held September 14, 2006. The meeting included the election of Mr. Alex Slabosky as the Committee's Chairperson. Testimony was also heard concerning the contact lenses trade issue. The Committee discussed each entity that was specified by the Legislative Council to review for consolidation consideration.

The third meeting was held September 28, 2006. The Committee discussed the testimony heard concerning the contact lenses trade issue and reviewed documentation provided regarding the topic. The Committee also discussed further the advisability of consolidating or eliminating the entities specified by the Legislative Council.

The fourth meeting was held October 11, 2006. The meeting was for the purpose of considering and approving recommendations on the topics assigned to the Committee and the Committee's final report.

#### **IV. SUMMARY OF TESTIMONY**

This section is a general summary of testimony received by the Committee on the issues assigned by the Legislative Council. To read a more complete report of this testimony and other matters considered by the Committee, the minutes of the Committee's four meetings can be found on the homepage of the Indiana General Assembly (<http://www.in.gov/legislative/>) or copies may be obtained by contacting the Legislative Information Center of the Legislative Services Agency.

##### **Contact Lens Restraint of Trade Issue**

The Committee heard testimony from representatives of 1-800-CONTACTS, an Internet-based retailer of contact lenses. Mr. Jay Magure, Director of Legislative Affairs, 1-800-CONTACTS, informed the Committee that the language from HR 73-2006 is language from a settlement agreement entered into between three manufacturers of contact lenses and attorney generals from 32 states to protect consumers of contact lenses. The settlement agreement required the three manufacturers to sell contact lenses in a commercially reasonable and non-discriminatory manner to alternative channels of distribution. The settlement agreement expires November 1, 2006. Mr. Magure stated that eye care providers are one of the few health care provider groups that are allowed to sell the product that they prescribe and the sale of this product results in a profit for the eye care provider. Mr. Magure further informed the Committee that contact lens manufacturers are entering into exclusive relationships with eye care providers, which he feels is an anti-competitive practice and not consumer friendly. Mr. Magure fears that these exclusive relationships will become more prevalent upon the expiration of the settlement agreement. Dr. Michael Cohen, 1-800-CONTACTS, stated that he is concerned that there is an emerging trend in the eye care industry to place profits before patient care.

Mr. Edward Correia, Counsel for CooperVision, Inc., a manufacturer of contact lenses, informed the Committee that there is already vigorous competition in the contact lens industry. Mr. Correia further stated that CooperVision does not have exclusive agreements with eye care providers and that it was not a party to the settlement agreement discussed above. Mr. Correia referred the Committee to a Federal Trade Commission (FTC) report in which the FTC conducted a study regarding whether restrictions on distribution of contact lenses limited a consumer's choice and hurt the consumer. The FTC rejected this argument, saying that the restrictions on distribution did not harm competition and consumers. The FTC looked specifically at CooperVision's product Proclear, finding that this product is sold to retailers ranging from independent eye care providers to retail chains and wholesale clubs. The FTC found that CooperVision did not sell Proclear on the Internet did not harm competition or consumers. Mr. Correia further commented that anti-trust laws allow manufacturers to choose who they want to enter into business with, and that legislation like that introduced in Indiana last year would be highly intrusive and affect competitive negotiating that presently takes place.

Mr. Jim Zieba, Indiana Optometric Association, stated that he opposed the legislation introduced in Indiana last session. Mr. Zieba commented that this is a battle between the manufacturers and the distributors, and that eye care professionals are adversely caught in the middle of the fight. The language in the legislation last year could prevent a consumer from having access to certain contact lens products in Indiana. Mr. Zieba informed the Committee that the federal Fairness to Contact Lens Consumers Act (FCLCA) protects the consumer

already by requiring the patient to receive a copy of the contact lens prescription. Mr. Zieba stated that this is a federal issue and Congress is already taking testimony on the subject.

Ms. Kim Williams, Indiana Academy of Ophthalmology, informed the Committee that ophthalmologists are concerned with patient safety. If the legislation proposed last year would move forward, prescriptive authority would be affected because of the language in the legislation. Utah passed legislation similar to that proposed in Indiana and a contact lens manufacturer decided as a result to no longer do business in Utah. Federal law is already in place to protect contact lens consumers.

Ms. Peggy Venable, consumer advocate for Americans for Prosperity, expressed interest in preserving consumer choice and a free market. Ms. Venable asked the Committee not to wait for the federal government to fix the problem. Ms. Venable stated that no other health care professional except eye care professionals are allowed to sell the product that the professional prescribes, and Ms. Venable feels this should be the case with eye care professionals.

### Consolidation of Committees

The Committee was provided with the statutes for the five committees that the Legislative Council requested the Committee review: (1) Health Finance Advisory Committee; (2) Health Policy Advisory Committee (this Committee); (3) Medicaid Advisory Committee; (4) Health Care Account Advisory Board; and (5) Medicaid Work Incentives Council.

#### *Health Finance Advisory Committee/ Health Policy Advisory Committee*

Dan Seitz, Bose Treacy and Associates, informed the Committee that he has been a member of the Health Finance Advisory Committee since its inception and the committee has only met once. Mr. Seitz gave the Committee the history regarding why the subcommittees were established. In the 1980s and 1990s, a group of health care lobbyists attempted to bring disparate stakeholders together in a non-confrontational manner to establish a dialogue among all the stakeholders concerning the serious problems in the delivery of health care. The intent was to force legislators to listen to experts who have met collaboratively in a non-confrontational manner instead of getting wrapped up in the emotions at the time. Mr. Seitz stated that in his opinion in order for health care reform to occur, resources need to be available to the legislators outside of the legislative process. Both the Health Finance Advisory Committee and the Health Policy Advisory Committee have identical charges in the statute, and some overlap in the committee membership exists. Committee members discussed whether to combine the Health Policy Advisory Committee and the Health Finance Advisory Committee, stating that some of the membership is duplicated. The Committee determined that it would review the membership of the two committees and determine how the two subcommittees could be consolidated.

#### *Medicaid Advisory Committee*

Staff informed the Committee that the Medicaid Advisory Committee is a federally required committee. The Committee was informed that the Medicaid Advisory Committee is also currently reviewing its structure to determine whether any changes are needed in order for it to act in a more effective capacity. The Committee determined that no action would be taken concerning this federally required committee.

#### *Medicaid Work Incentives Council*

Ms. Nancy Jewell, a member of the Committee and a former Chairperson of the Medicaid Work Incentives Council prepared a statement informing the Committee that the Council worked in an advisory capacity to discuss infrastructure issues concerning federal grants and to perform outreach to the targeted population. Ms. Jewell stated that the Council did have attendance problems, but there is still a need to address the issues relating to reaching the target population required under the statute. The Committee members questioned whether this Council is required by federal law and asked staff to find out. Staff determined that the Council is not federally required.

#### *Health Care Account Advisory Board*

This Board started out as the Indiana Health Care Trust Fund Advisory Committee. The statute was subsequently revised to remove the "Trust Fund" language and the name was changed to the Health Care Account Advisory Board. In the FY 2002 - 2003 Budget, the Committee was appropriated \$4.1 M annually over the estimated CHIP appropriation to use in making grants as the statute allowed. \$1.7 M was actually spent for this purpose in FY 2002. According to Dan Novreske, then a Deputy in the Budget Agency, the Board met twice only in FY 2002. There was no spending in FY 2003. No additional appropriations were made for the Board's discretionary use after the FY 2002 -2003 Budget Bill. The Committee asked whether this Board is federally required, and agreed that if it is not, the Board is probably no longer necessary.

### **V. COMMITTEE FINDINGS AND RECOMMENDATIONS**

The Committee voted to make the following recommendations:

#### Contact Lens Restraint of Trade Issue

The Committee recommends that a committee of commerce or trade of the General Assembly study the issue in the next session, taking into consideration the expiration of the settlement agreement on November 1, 2006, and federal government action. The Committee further recommends that the General Assembly not pass legislation if the General Assembly finds no evidence of restraint of trade.

#### Consolidation of Committees Issue

The Committee recommends that no action be taken concerning the Medicaid Advisory Committee because the committee is required by federal law.

The Committee recommends eliminating the Medicaid Work Incentives Council.

The Committee recommends eliminating the Health Care Account Advisory Board.

The Committee recommends the consolidation of the Health Policy Advisory Committee and the Health Finance Advisory Committee. The Committee reviewed the membership of the two committees and consolidated the membership into a recommended membership for the consolidated committee. See Exhibit 1 for a chart of the new membership.

## **WITNESS LIST**

### **September 14, 2006**

Ms. Tory Callaghan Castor, Hays Murray Castor, LLP

Mr. Jay Magure, Director of Legislative Affairs, 1-800-CONTACTS

Dr. Michael Cohen, Vice President of Professional Services, 1-800-CONTACTS

Mr. Edward Correia, Counsel, CooperVision, Inc.

Mr. Jim Zieba, Executive Director, Indiana Optometric Association

Ms. Kim Williams, Indiana Academy of Ophthalmology

Ms. Peggy Venable, Consumer Advocate, Americans for Prosperity

### **September 28, 2006**

Mr. Jay Magure, 1-800-CONTACTS

Mr. Dan Seitz, Bose Treacy and Associates